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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.5664 of 2019 (O&M)
Date of Decision: 10.12.2019**

**Director, Mines and Geology, Haryana Chandigarh & Ors.
.....Appellants**

Vs

**Jagdish and another
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Vishal Kashyap, A.A.G., Haryana
for the appellants.

RAJ MOHAN SINGH, J.

[1]. Appellants are in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration.

[2]. Brief facts are that the plaintiff filed a suit for declaration on the ground that Letter No.69 dated 28.01.2011 issued by Mines Officer-cum-Assistant Collector 1st Grade, Mine & Geology Department, Jind, Letter No.68/OK dated 04.02.2011 issued by Tehsildar, Tohana, District Fatehabad and Rapat No.174 dated 09.02.2011 mentioned in the jamabandi for the year 2009-2010 of village Baliawala, Tehsil Tohana are illegal, wrong, null and void, and are not binding upon the rights of the

plaintiff. Plaintiff also sought permanent injunction restraining the defendants from auctioning and selling the land of plaintiff as per Rapat No.174 dated 09.02.2011.

[3]. Plaintiff pleaded that on 23.10.2006, a contract was executed between defendant No.1-Department and defendant No.6 namely Satyawan for lifting the sand through maximum 4 outlets in the canal by making temporary ramps so as to avoid any danger to the banks of the canal. Plaintiff stood as surety of the contractor i.e. defendant No.6. On 26.08.2013, when the plaintiff obtained *jamabandi* for the purpose of taking loan, he came to know about the attachment which was effected vide Rapat No.174 dated 09.02.2011 by Tehsildar, Tohana. The said attachment was done vide Letter No.68/OK dated 04.02.2011 on the basis of Letter No.69 dated 28.01.2011 issued by the Mines Officer-cum-Assistant Collector 1st Grade, Mine & Geology Department, Jind. The said attachment was claimed to be null and void as no notice was issued by the defendants to the plaintiff. The plaintiff asked the defendants to withdraw the impugned notices and to delete Rapat No.174 dated 09.02.2011, but in vain. In the aforesaid background, the suit was filed.

[4]. Defendants No.1 to 5 contested the suit. Defendant No.6 opted to be proceeded against *ex parte* on 29.04.2015.

Defendants No.1 to 5 contested the suit on numerous grounds. On merits, defendants relied upon Memo No.860 dated 03.12.2010 which was allegedly issued before attachment proceedings vide which defendant No.2 allegedly advised the plaintiff that either ask defendant No.6 to deposit the contract money along with interest otherwise recovery proceedings would be initiated against him as per the Land Revenue Act.

[5]. The aforesaid Memo No.860 dated 03.12.2010 is the core issue between the parties. Both the Courts below have found that the aforesaid memo (Ex.D-8) was never despatched to the plaintiff as no postal receipt was produced by the defendants on record. No receipt of Post Office has been tendered in evidence showing that the notice dated 03.12.2010 was ever issued by defendant No.2 asking the plaintiff to suggest defendant No.6 to deposit the contract money along with interest, otherwise recovery proceedings would be initiated against him as per Land Revenue Act. No notice of breach of contract by defendant No.6 was proved in view of non-execution of notice dated 03.12.2010 to the plaintiff. In the absence of any such notice, the plaintiff could not be punished on the basis of principal of natural justice. No opportunity was granted to the plaintiff for effecting any attachment against his properties.

[6]. Both the Courts below have rightly concluded that in

the absence of proving due execution of letter dated 03.12.2010, the plaintiff cannot be punished by the defendants. The findings of facts recorded by both the Courts below on this issue could not be proved to be perverse or the result of misreading of evidence in any manner.

[7]. The findings recorded by the Courts below are based on proper appreciation of evidence. The memo dated 03.12.2010 (Ex.D-8) could not be proved by the defendants with reference to its execution. No postal receipt has been exhibited on record. It could not be proved as to whether the aforesaid memo was ever sent to the plaintiff and the same was received in any manner.

[8]. Learned State counsel could not point out any such substantial question of law, which would tilt the fate of the case in favour of the appellants. In fact, no substantial question of law worth consideration is involved in the present appeal. The findings recorded by both the Courts below cannot be interfered in the present Regular Second Appeal.

[9]. For the reasons recorded hereinabove, I do not find any justification to interfere in this appeal. The same is accordingly dismissed in *limine*.

[10]. Since the appeal is being dismissed in *limine*, therefore, there is no need to pass any order in the applications for

condonation of delay in re-filing as well in filing the appeal. The said applications are accordingly disposed of along with all other misc. applications, if pending.

December 10, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No